

COMMONWEALTH OF VIRGINIA

DELEGATE DANNY MARSHALL, III Chair
SENATOR MAMIE LOCKE, Vice-Chair
ELIZABETH A. PALEN, Executive Director



POCAHONTAS BUILDING
900 EAST MAIN STREET, 10th FLOOR
RICHMOND, VIRGINIA 23219
(PHONE) 804-698-1875 Director

epalen@dls.virginia.gov
<http://dls.virginia.gov/commissions/vhc.htm>

VIRGINIA HOUSING COMMISSION

MEETING SUMMARY

Common Interest Communities Workgroup

Tuesday, August 7, 2018, 10:00 a.m.

House Room 1, The Capitol

Members Present:

David L. Bulova, Chair, House of Delegates; George L. Barker, Senate of Virginia; Betsy Carr, House of Delegates; Janice Burgess, Virginia Housing Development Authority; Michelle Casciato, Community Association Institute; Andrew Clark, Home Builders Association of Virginia; Tyler Craddock, Virginia Association of Housing and Developmental Officials; Chip Dicks, Virginia Association of Realtors; Chet Hahne, Virginia Association of Community Managers; Heather Gillespie, Common Interest Community; Dale Goodman, Virginia Resort Development Association; Michelle Gowdy, Virginia Municipal League; Cynthia Hall, Gubernatorial Appointee; Trisha L. Henshaw, Department of Professional and Occupational Regulation; Joseph Hudgins, Independent Insurance Agents of Virginia; Mike Inman, Community Association Institute; Joe Lerch, Virginia Association of Counties; Chandler Scarborough, Green Run Homes Association; Scott Sterling, Common Interest Community Board; Pia Trigiani, Common Interest Communities Board; Jerry Wright, Community Association Institute; Elizabeth Palen, Executive Director

Delegate Bulova welcomed the Workgroup and speakers and called the meeting to order at 10:00 a.m.

Topic: Overview from CIC Board

Trisha Henshaw, Executive Director of the Common Interest Communities Board, gave a brief overview of the Board accomplishments in the past year, including the following:

- 1) The Common Interest Communities Board needs to develop a letter to accompany the disclosure packet distributed to common interest communities to reflect that it is no longer a one-page packet;

DELEGATE DANNY W. MARSHALL
DELEGATE DAVID L. BULOVA
DELEGATE BETSY CARR
DELEGATE BARRY D. KNIGHT
DELEGATE CHRISTOPHER K. PEACE

SENATOR MAMIE E. LOCKE
SENATOR GEORGE L. BARKER
SENATOR WILLIAM M. STANLEY, JR.

CYNTHIA HALL
LAURA D. LAFAYETTE
LAWRENCE PEARSON

2) Concerning resale certificates for condominium purchases, the Common Interest Communities Board considered comments and then final regulations about resale certificates in July 2018; and

(3) Non-professionally managed associations had a reference document for fees created by the Common Interest Communities Board that defines maximum allowable fees, and adjusted fees as the law requires. There is now an extended renewal fee reduction; the new fee is \$10 until 2019.

Topic: Home-based Businesses in POAs; SB 707 (2018, Surovell)

Senator Scott Surovell gave an overview of the need for home-based child care and SB 707; this version of proposed legislation promotes transparency and affects the regulation of child care by property owner associations (POAs). Senator Surovell stated that child care in Northern Virginia is a priority and that there is a great economic need for childcare to be convenient and affordable.

Section 55-513.2 of the Code of Virginia provides that if an association in a locality classifies home-based businesses as an accessory use under its zoning ordinance, and if an association wants to restrict home-based businesses in its declaration or through the use of an association's rules, it may do so. The proposed legislation expands home-based business to include home-based child care and requires POAs to state in their declaration or through the association's rules that home-based child care is prohibited if the POA wishes to prohibit it. Potential home purchasers are then placed on notice before they buy property in a POA.

Common law and court decisions generally provide that persons should not be restricted in their own real estate, barring any law to the contrary. Judges are strictly construing the law because the home-base business definition is vague. This proposed legislation requires no change in codified law, only a change in POA rules. Senator Surovell stated that there must be some authority in the POA declaration to create rules and consistency in their application.

Pia Trigiani, Community Associations Institute, asserted that if a POA's documents state residential, there is a need to look to the locality; only then should home-based child care be defined by the POA's rules. She said the benchmark has been to look at the local ordinance on home-based child care for the locality.

Testimony was given by Childcare Aware Virginia and home child care providers, all of whom advocated for home-based child care in POAs.

A citizen, Greg Pierson of Brandermill, which is composed of 38,000 homes, six office parks, and is a POA, stated that the POA covenant contains a clause that prohibits foot traffic. He is concerned that this proposed legislation would allow

a POA's rule to circumvent a covenant because the covenant doesn't specifically address child care.

Janet Foote, HOA President, Lakeridge Park, an association that is 46 years old, said that the proposed legislation clarifies that (i) it doesn't negate POA declarations and that (ii) child care should have a special carve-out because government regulates it differently than other businesses.

Joe Lerch, Virginia Municipal League, mentioned that a close reading of the proposed legislation appears to indicate that it applies only to localities with the county manager form of government; i.e., Arlington County. That, Senator Surovell and others agreed, was not the intent of the proposed legislation.

Delegate Bulova requested that Pia Trigiani and Senator Surovell work with Chip Dicks and bring a more succinct proposed bill version back to the next meeting of this Workgroup.

Topic: Reserve Fund Disclosure and Sale; SBs 705, 706 (Surovell, 2018)

Senator Surovell expounded on proposed legislation relating to reserve fund disclosure. HOAs and cooperatives are required by statute to conduct a reserve study every five years. The report is required to project the amount of funds necessary to keep the infrastructure intact and functioning properly.

When a buyer is selling a home in a POA, the seller receives the reserve report in the disclosure packet of POA documents. It summarizes the amount of unfunded reserve needs. The combined message of the two unsuccessful bills from the 2018 Session is that there must be a description of what the monetary shortfall for the association totals. This allows for transparency and allows for personal liability to be calculated. It requires POA budgets to reflect required reserves for infrastructure care in the future. The budget should be published in the community, and all property owners should be well informed if the reserves are funded or underfunded. An audited financial letter from a certified public accountant should also be part of the disclosure packet.

Senator Surovell cited the example of a Stafford County POA that had an abandoned dam. The POA went out of business, and the association had not raised yearly dues from its members. Subsequently, all other home owners in the broader locality had to pay through their tax dollars.

Dawn Bauman, Community Associations Institute, said that there are only seven states in the United States that have reserve laws. A typical organization has 140 homes or fewer. If reserve plan needs to be fully funded, a sentence in the budget should say the reserve is not fully funded. She does not agree that POA board members should be penalized if there are not sufficient reserves for the POA to operate.

Delegate Bulova inquired (1) if there were penalties-if the POA chooses to not fully fund, (2) if the calculation is made on existing information, could the numbers needed be potentially different from day to day, and (3) whether disclosure during a budget process should allow an opportunity for the POA's board members to review the budget and look at reserve plan when deciding on how to vote on the budget.

Heather Gillespie, Common Interest Communities (CIC) Ombudsperson, stated that many common interest communities' boards are not knowledgeable and that this type of legislation would not work in an unsophisticated association. She based her view on conversations she has had many people who phone her about CICs. Additionally, she has concern about the words *prima facie* evidence of breach of fiduciary duty in the proposed legislation.

Delegate Carr, as a consumer and resident in a POA, said she would appreciate knowing the budget and reserve information both as an owner and as a board member. She stated it would be very helpful to her and helpful for the association's long-term health.

All parties will work together to bring a draft for workgroup approval to the next meeting.

Topic: Liability Insurance Minimums for Associations

Senator Scott Surovell gave a brief overview of the issue that precipitated the need for legislation on this matter.

Two-years ago, a corner of a condominium dropped four inches as the steel girder had rusted out. The building partially collapsed; 36 out of 500 units were condemned, and all units lost value. The cause of the collapse was lack of maintenance and a failure to maintain the premises, which only had a \$1 million liability insurance policy on a \$500 million property.

He advocated requiring any association that is self-managed to have a higher liability insurance amount.

Joe Hudgins, Independent Insurance Agents of Virginia, said he has no position on this issue, but when considering the valuation of a building, the market and the replacement cost have to be factored in the equation. To require all buildings, new and old, to be insured to rebuild capacity could force some common interest communities not to have insurance at all. There may be a need, but the capacity in the industry does not exist. Mr. Hudgins said that a general liability policy wouldn't pay for lack of maintenance on a building.

Delegate Bullova asked if there is a mechanism on the state level or a risk pool to access, like an injury fund, such as the Virginia Uninsured Motorist Fund insurance, where the state collects premiums, and then allows for claims access. The answer was no, and this issue the Workgroup unanimously agreed would not move forward.

Topic: Vote Tallies; HB1031 (2018, Convirs-Fowler)

Delegate Kelly Convirs-Fowler addressed the Workgroup in support of an affirmative right for a resident of a POA to find out a vote count. The proposed legislation is intended to clarify these rights, in the interest of promoting accountability.

Delegate Convirs-Fowler stated that she had a constituent who ran for membership on the constituent's POA Board and who, after the election took place, was not allowed to see the vote tallies.

Pia Trigiani commented that there nothing in law that says you can't release books and records, however, a person should not be able to see how an individual voted. They should be able, however, to view the election outcome and how it was tallied.

The chair requested a bill draft for the Workgroup to view at the next meeting.

The chair called for was public comment, hearing none, the meeting was adjourned at 12:26 p.m.